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AND RELATED MATTERS

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To: Examiner Hai Vo FAX: 571-273-1485  
Company: U.S. Patent and Trademark Office  
From: Maxwell J. Petersen  
Re: Serial No.: 09/696,735  
Date: 20 April 2004

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Docket No.: KC-13.406.1

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Richard Macferran SHANE  
Glen Thomas MILDENHALL  
Michael Thomas HEFFELFINGER

Serial No.: 09/696,735

Filing Date: 25 October 2000

Title: STYRENIC BLOCK COPOLYMER  
BREATHABLE ELASTOMERIC FILMS

Group No.: 1771

Examiner: Hai Vo

## APPLICANTS' INTERVIEW SUMMARY

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Attn: Examiner Hai Vo  
(via facsimile 571-273-1485)

Dear Sir:

Applicants' attorney thanks the Examiner for the telephone interview on 25 March 2004. The discussion focused on U.S. Patent 6,258,308 to Brady et al. and Applicants' Claims 62 and 63. Brady et al. discloses a film having an elastomer inclusion ratio of about 1.4 -25% by weight styrene-based elastomer in the polyolefin

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component (Col. 8, lines 55-67). Thus, the film of Brady et al. may contain about 1.4-25 parts by weight styrene-based elastomer and about 75-98.6 parts by weight polyolefin, based on the combined polymer weight. Applicants' claims, by contrast, require about 50-80 parts by weight high performance elastomer and about 20-50 parts by weight low performance elastomer, based on the combined polymer weight. Applicants' claims thus require at least about twice as much high performance elastomer relative to low performance elastomer, as is possible from the disclosure of Brady et al.

Brady et al. further teaches that a styrene-based elastomer is only used as a modifier, to improve the impact and tear strength of a polyolefin-based film (Col. 9, lines 36-58). Additives which are intended to modify (improve) some property of a polyolefin film are understandably used at low levels. The use of such an additive at levels equal or higher than the polyolefin would defeat the purpose of using the additive as a modifier. The properties of such a film would be dominated by the additive instead of the polyolefin, and the film would no longer be polyolefin-based. For this additional reason, Brady et al. does not suggest using styrene-based elastomers in amounts anywhere near amounts contemplated by Applicants' claims.

The Examiner asked for a Declaration comparing the properties of the films disclosed in Brady et al. to films claimed by Applicants. Applicants are not

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able to provide such a Declaration at this time. Applicants have not, in the past, made films according to Brady et al. Applicants were not able to have such films made and tested within the one-month time frame discussed in the interview.

A showing of criticality is generally important when a prior art reference discloses a broad (generic) range and the claims being examined are directed to a much narrower range within the broad range. In the present case, the prior art does not disclose a broad range encompassing Applicants' claimed range. Instead, the range claimed by Applicants and the range disclosed in the prior art are mutually exclusive, and neither one reads on the other. In this instance, the language of the claims alone should be sufficient to distinguish over the prior art, without resort to extrinsic evidence.

Respectfully submitted,



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